SUPREME COURT, U.S.
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No. 04-1430

IN THE

Supreme Court of the United States

ALBERT JACKSON,

Petitioner,

v.

DELAWARE RIVER AND BAY AUTHORITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

MARY ELISA REEVES
Counsel of Record
SUSAN J. WIENER
DONNA ADELSBERGER
& ASSOCIATES, P.C.
6 Royal Avenue
P.O. Box 530
Glenside, PA 19038
(215) 576-8690

Attorneys for Respondent

194541

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

Respondent, Delaware River and Bay Authority, operates a ferry on which the Petitioner, Albert Jackson, was employed as a seaman. In June, 2002, Petitioner settled a lawsuit against the Respondent, in which, after extensive negotiation, a release of all claims was signed. The questions presented are:

1. Whether the United States Court of Appeals for the Third Circuit correctly affirmed the Opinion in the United States District Court for the District of New Jersey in concluding that the Petitioner had waived any entitlement to seek maintenance, cure or damages under the Jones Act by signing a valid release of all claims against the Respondent.

2. Whether this Court's Opinion in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990) was correctly interpreted by the United States District Court for the District of New Jersey as precluding punitive damages in a seaman's personal injury case under the Jones Act.

STATEMENT PURSUANT TO RULE 29.6

Respondent, Delaware River and Bay Authority, is a bi-state government agency.

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STATEMENT OF THE CASE

This case involves an attempt by Petitioner, Albert Jackson (hereinafter "Jackson"), a former employee of Respondent, Delaware River and Bay Authority (hereinafter "DRBA"), to collect damages on account of a congenital foot condition allegedly exacerbated by DRBA's working conditions.

A. Jackson's Work and Litigation History.

Jackson was employed as a seaman on ferries owned and operated by the DRBA for over ten years until he voluntarily left its employ in June, 2002. Prior to his employment with the DRBA, Jackson worked as a seaman for various other maritime employers since 1965. Although he lacks a formal education, Jackson is a highly intelligent individual, who had been actively involved in various civil lawsuits prior to this pending litigation and had signed releases in prior settlements. (District Ct. Opinion at 6-7).[1]

Prior to instituting this lawsuit, Jackson had brought numerous claims and lawsuits against former maritime employers and the maritime union, including personal injury suits such as this one, and claims that the union violated the Racketeering, Influence and Corruption Act ("RICO") as well as its own contract and constitution. (R. 45-50a).[2] During

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1. The Opinion of Judge Joseph E. Irenas of the District Court for the District of New Jersey is attached to the Petition for a Writ of Certiorari at Appendix 1-10.

2. The record refers to the Joint Appendix filed with the United States Court of Appeals for the Third Circuit.

his tenure with the DRBA, Jackson filed multiple injury reports, grievances over his working conditions and claims of racial discrimination. (R. 35-45a, 572-585a). As a result of his litigious nature, Jackson had settled maritime claims with both the DRBA and former employers on at least five prior occasions. Jackson also had a fair understanding of his rights in connection with maintenance and cure long before he started his employment with the DRBA. (R. 58a). The record clearly supports the conclusion that Jackson was an experienced litigant who understood his rights under maritime law when he signed a Release of all claims against the DRBA.

B. The Settlement of the Prior Lawsuit and Release of All Claims.

Jackson, along with two other employees (Donnie McCoy and Dawn Pitts) was involved in a lawsuit against the DRBA alleging racial discrimination and poor working conditions, which was filed in the New Jersey District Court and settled on the second day of trial before Judge Simandle, June 12, 2002, hereinafter referred to as the "Prior Lawsuit." At the time of the settlement, a handwritten memorandum was prepared outlining the basic terms, which was signed by Jackson. (R. 467-470a). This memorandum acknowledged that Jackson was releasing "all claims" against the DRBA. Judge Simandle also held a hearing on the record to make absolutely certain that Jackson and the two co-plaintiffs understood and accepted the terms of the settlement.

As part of the settlement, Jackson received a lump sum payment of $125,000, and an acceleration of his retirement benefits, valued at $135,165.96, for a total settlement package of $260,165.96. Jackson and his spouse also receive all

standard retirement benefits including health, dental, vision and life insurance, at no cost to them. DRBA's liability insurance carrier paid only $35,000 of the settlement, which was deemed to represent the value of the discrimination claim. The $90,000 remainder of the lump sum and the entire retirement package was paid by the DRBA to achieve closure and the end of all claims by Jackson. (District Ct. Opinion at 6, 9). To this end, in the Release, Jackson agreed to: (1) release all claims against the DRBA, (2) bring no further claims or suits against the DRBA, (3) resign his employment, effective June 16, 2002, (4) never seek employment again with the DRBA, and (5) restrict himself to only public property of the DRBA. (R. 491-497a). The record shows overwhelmingly that it was DRBA's desire to buy peace entirely and to not have to deal with Jackson on any claims in the future.

During the June 12, 2002 settlement confirmation hearing, Judge Simandle questioned Jackson and the two co-plaintiffs individually as to their understanding of the terms of the settlement. Donnie McCoy was questioned first and made it clear that he was only agreeing to settle his discrimination claims and was specifically preserving a separate claim for a work-related injury. This exception was incorporated into the Release signed by Mr. McCoy. (District Ct. Opinion at 7-8).[3] Jackson and his attorneys were thus

3. The District Court Opinion, included in the Petition for Writ of Certiorari at App. 7-8 is misstated at Paragraphs 16-17. Paragraph 16 should read as follows:

> As a plaintiff before Judge Simandle on June 12, 2002, therefore, Jackson was no stranger to a courtroom or to settlement negotiations. Having settled at least three

(Cont'd)

well aware that the settlement was to encompass all possible claims, which is why an exception had to be carved out for McCoy's personal injury claim. When questioned by Judge Simandle, Jackson acknowledged that he was present in the courtroom and heard the questions directed to his co-workers. This would have also encompassed the question the Court asked of Dawn Pitts, the second plaintiff involved in the Prior Lawsuit: "and do you understood as well that if you accept this agreement and this case is dismissed, any claims that you've brought against the DRBA or have against the DRBA to this date are extinguished and that you can no longer proceed on them." (R. 485a).

When it was his turn, Jackson replied affirmatively that he had entered the settlement agreement voluntarily. He had no questions about any of the terms of the agreement and

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(Cont'd)

> cases, likely more, prior to that date, it is hard to believe that he did not understand that a release of "all" claims against the DRBA would preclude further action against this employer. This idea is bolstered by the fact that a Mr. McKoy, a co-plaintiff before Judge Simandle, orally preserved a workers' compensation claim in his settlement agreement with the DRBA. From McKoy's example, it should have been clear to Jackson that if he wanted to preserve any claims, he would have to specify them in the settlement agreement.

Paragraph 17 should read, in pertinent part, as follows:

> In further arguing that his understanding of his rights at the time of settlement was incomplete, Jackson contests that he was unaware of any potential claim arising from his congenital foot condition. This argument appears to be at least partially untrue. . . .

confirmed that he had sufficient time to review the matter and consult with his lawyer. (R. 486-488a). Following the hearing, the Release was prepared and circulated to all attorneys.

Jackson signed the Release, aptly titled "Settlement Agreement and General Release of All Claims" on July 1, 2002, and by its terms, all claims were considered as resolved against the DRBA. The plain language of the Release covered

> any claims which were or could have been asserted in the Lawsuit and all other claims and causes of action of every nature and description which Jackson . . . ever had, now has or hereafter can, shall, or may have for, upon or by reason of any matter, cause, action, or thing whatsoever whether known or unknown from the beginning of the world to the date of this Release.

(R. 492a).

The Release further included, without limitation, any and all claims and causes of action arising out of Jackson's employment by and/or association with the DRBA. (R. 491-492a). The broad nature of the Release and the intent to preclude all claims was well-documented:

> Jackson agrees not to permit, authorize, initiate, or continue the Lawsuit or any civil litigation, other proceedings of any kind . . . on his behalf based in whole or part upon any action or failure to act by Releasees which occurred on or before the date of this Settlement Agreement.

(R. 494a).

Jackson acknowledged that he carefully read and fully understood the terms and effects of the Release, and conferred with his attorney before signing it. (R. 99-100a, 268-269a, 496a). The District Court found no record evidence that the negotiations leading to the settlement were deceptive or coercive in any way and therefore determined there to be no genuine question of material fact that the Release was executed freely. (Opinion at 6). Jackson was also found to be "a sophisticated and experienced litigant" and there was "little doubt that he entered into the settlement agreement with a full understanding of the claims he was relinquishing." (*Id.*) Jackson was given every opportunity to reserve, or at least question the claim concerning his feet, if he so desired.

C. Jackson's Current Claims.

During the pendency of the Prior Lawsuit, in 2000, Jackson developed a painful condition of his feet for which his family doctor prescribed orthotic inserts for his shoes. (Petition at 4). Jackson's health insurance coverage did not cover the cost of the orthotics. Jackson therefore had numerous communications with Leo Long and Bonnie Miller, employees of DRBA in the benefits and risk management departments. They informed Jackson of the requirement to complete certain paperwork in order to pursue a maritime claim. Rather than going this route, Jackson filed a grievance against DRBA and an EEOC Complaint, which listed pressure on his feet as a physical injury from being denied a turn at the wheel watch of the ferry which would have afforded him an opportunity to sit down at the helm during his shift. (District Ct. Opinion at 8). Jackson discussed these claims with his attorney, and even complained that Leo Long was discriminating against him by offering other employees the shoe inserts. (R. 612a).

The District Court reviewed the entire record and concluded that Jackson's "prior behavior betrays a keen awareness of legal options" and rejected the notion that Jackson was unaware of his foot injury claim at the time of signing the Release. (Opinion at 9). The record is replete with support for the District Court's conclusion that Jackson was well aware of the claim regarding his feet in advance of the settlement. He had communicated with Leo Long of DRBA's benefits' department, Bonnie Miller of Risk Management, Operations Manager Glen Cox, Human Resources Director Linda Murphy, and his own attorney about the condition of his feet, the exacerbation of that condition by long hours on his feet and the lack of orthotics. Whether this claim is characterized as an issue of marine compensation, insurance or a grievance, the important point was that Jackson was well aware of his foot injury claims at the time he settled the Prior Lawsuit and signed the Release of all claims. There was ample support for the District Court's conclusion that there was no genuine factual dispute that Jackson knew of his claim with respect to his feet when he signed the Release.

REASONS FOR DENYING THE PETITION

The Petition for Certiorari does not present any compelling reasons for this Court's consideration and contains misstatements of fact and law that need to be addressed. "Review on a writ of certiorari is not a matter of right, but of judicial discretion." (U.S. Sup. Ct. R. 10). The decision below does not conflict with a decision of this Court or any Court of Appeals, nor has an important federal question been presented to this Court. Accordingly, none of the factors outlined in Rule 10 would justify further review of the case on a writ of certiorari. This was a fact intensive case well-supported by the record. Jackson even acknowledges that the case does not implicate a matter of compelling national importance. (Petition at 25).

A. The Petition is based on misstatements of fact and matters outside the record.

Jackson contends that the District Court failed to consider DRBA's concession of the merits of the underlying claim for maintenance and cure, and this allegation is patently untrue. (Petition at 15). For purposes of the dispositive motion filed before the District Court, it was conceded only that, with respect to the underlying claim, there were genuine issues of material fact which would have precluded the finding of summary judgment on the merits. Jackson also falsely contends that the only evidence offered by DRBA was the wording of the Release itself. (Petition at 16). In support of its position that Jackson had waived all claims against DRBA, ample evidence was offered to the District Court including, the handwritten memorandum signed by Jackson on the day of the settlement, the testimony taken before Judge Simandle to confirm the settlement, deposition testimony of Jackson, DRBA representatives, and the attorneys involved in the negotiation of the settlement, prior grievances and claims filed by Jackson, and letters and e-mail communications authored by Jackson.

In order to discount one of the District Court's factual observations, Jackson references evaluations contained in his personnel file. (Petition at 3-4). The personnel file was never mentioned or submitted into evidence at the district court or appellate level. It is well-established that the Supreme Court will only consider issues raised and briefed in the lower courts. *TRW, Inc. v. Andrews*, 534 U.S. 19, 34 (2001), *on remand*, 289 F.3d 600 (9th Cir. 2001); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 235 (1990), *on remand*, 896 F.2d 864 (5th Cir. 1990), *overruling, on other grounds, recognized by, Risich v. Bensalem Tp.*, 2005 W.L. 418611 (E.D. Pa.

2005); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 148 n.2 (1970). Because the personnel file was never discussed below, it should not be considered by this Court in making its determination as to whether to grant certiorari.

B. Jackson Signed a Valid Release barring all Future Claims Against the DRBA.

The District Court properly concluded that the Settlement Agreement and Release of All Claims signed by Jackson on July 1, 2002 barred the claims made in this case. This Court's decision in *Garrett v. Moore-McCormack Co.*, 317 U.S. 239 (1942) is the benchmark for determining the validity of a seaman's release, and established a two-part test to determine its enforceability. First, the Court must determine whether the Release was executed freely, without deception or coercion. Secondly, the Court determines whether the seaman entered into the settlement with a full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman are key issues in the Court's analysis. The District Court analyzed the record using these factors.

The record contains no evidence that Jackson was in any way coerced or deceiving into signing the Release. Jackson was an experienced litigant who understood his rights, and was fully aware of his foot injury at the time he signed the Release. The arguments raised by Jackson only relate to alleged deception and coercion with respect to the administrative handling of the foot injury claim, and not to the negotiation or signing of the Release. (District Ct. Opinion at 5). The District Court reviewed the evidence and found that the Release was executed into freely, relying on

the principles set forth in *Borne v. A & P Boat Rentals No. 4, Inc.*, 780 F.2d 1254, 1257 (5th Cir. 1986) (holding that a court must examine "whether there is any appearance of taint or fraud, deception, coercion or overreaching . . . in the negotiations eventuating in the settlement."). The District Court found "nothing in the case" to suggest that the negotiations which led to the signing of the Release were deceptive or coercive in any way. (Opinion at 6). Whether Jackson felt he was treated unfairly in the initial handling of this claim is of no relevance.

The second element of the *Garrett* test to evaluate the enforceability of a seaman's release is to examine whether the seaman fully understood his rights. The District Court found ample record support for the conclusion that Jackson was a "sophisticated and experienced litigant." (Opinion at 6). The Prior Lawsuit settled after a day of negotiations during which Jackson was ably represented by two attorneys, Joseph Grassi and Stephen Barry, a maritime lawyer in the same firm. (R. 255-256a). The settlement was then put on the record before Judge Simandle and Jackson had the opportunity to raise any questions or concerns. The record shows that Jackson consulted with his attorneys to review the terms of the Release, and he had adequate legal advice available to him if he had any questions before signing the Release. Jackson had selected an attorney of his own choosing and there was no language barrier, a concern often expressed in seamen release cases. The bald conclusion in the Petition (at 7) that Jackson was not in a proper state of mind during the settlement negotiations is not supported by the record.

Jackson also was in possession of ample medical advice and before signing the Release, had consulted with two different physicians for his feet. (R. 440a, 483a; District Ct.

Opinion at 10). Jackson was fully aware that the orthotic shoe inserts had not been provided by the DRBA and had even, during the course of employment, submitted two "unfit for duty slips" on account of his feet. (R. 604-605a; Petition at 10). The District Court found there to be "no doubt that Jackson was medically aware of his foot condition when he released all claims against the DRBA." (Opinion at 10). There is no record evidence of Jackson being given or relying upon an incorrect medical diagnosis, and Jackson's reference to this line of cases is improper. (Petition at 18).

During the settlement negotiations and subsequent hearing, Donnie McCoy, a co-plaintiff in the Prior Lawsuit, specifically reserved the right to pursue his claim for a work related injury. Jackson acknowledged and admitted that he heard this testimony. The District Court found that from McCoy's example, "it should have been clear to Jackson that if he wanted to preserve any claims, he would have to specify them in the settlement agreement." (Opinion at 7). In further analyzing Jackson's understanding of his rights, the District Court rejected the contention that Jackson was unaware of any potential claim arising from his congenital foot condition. The District Court cited to ample evidence in the record including Jackson's prior grievance filed with the DRBA and the EEOC which listed his foot injury, and his email communication to his attorney complaining of not being supplied the orthotics. (Opinion at 8-9).

As against this backdrop of evidence, Jackson argues that, in the maritime world, the release of "all claims" does not really mean "all claims." Not having any case law to support this rather nonsensical premise, Jackson submitted the affidavit of a maritime attorney who offered his opinion on the scope of the Release, and this was properly rejected

by the District Court. The federal courts of the United States are perfectly capable of interpreting maritime law, and the only time it is appropriate to submit an attorney opinion is when the law to be applied is that of a foreign country. *Adalman v. Baker, Watts & Co.*, 807 F.2d 359, 366 (4th Cir. 1986). Moreover, it was improper for Jackson to have attempted to oppose summary judgment with a conclusory and self-serving opinion, instead of referring to genuine issues of material fact.[4] Regardless, even if this Court were to accept the premise that "all claims" was to be limited to all claims that could have been brought in the Prior Lawsuit, the District Court would have reached the same conclusion. The foot injury claims were known and could easily have been raised in the Prior Lawsuit.

The District Court reviewed the record facts and it was absolutely clear that adequate consideration was given for the waiver of all claims. The total financial value of the settlement to Jackson was $260,000, and the insurance carrier contributed only $35,000 for the discrimination claim in the Prior Lawsuit.[5] The record showed that it was DRBA's intention "to essentially buy a release of all possible claims and sever the relationship with Jackson entirely . . . [and] the potential foot injury claim certainly falls under that

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4. Jackson's Affidavit was not based on first hand knowledge of the facts alleged and also violated District of New Jersey Rule 7.2(a) which prohibited the inclusion of legal argument in affidavits. *See, e.g, Assisted Living Assoc. of Moorestown, L.L.C. v. Moorestown Tp.*, 996 F. Supp. 409, 443 (D.N.J. 1998). It was no wonder that the District Court chose to say nothing about this affidavit in its Opinion.

5. The District Court noted that cases overturned for inadequate compensation generally did not involve amounts in excess of $250,000. (Opinion at 9).

compensatory umbrella." (District Ct. Opinion at 9). While no portion of the substantial settlement in the Prior Lawsuit was specifically allocated to "maritime claims", the intention to release all claims, even future and unknown claims, was clearly set forth in the Release and should therefore be upheld. *Simpson v. Lykes Brothers, Inc.*, 22 F.3d 601 (5th Cir. 1994).

C. Punitive Damages are not Recoverable in a Seaman's Case Governed by the Jones Act.

The District Court did not reach the merits of Jackson's claim for punitive damages finding that it was barred by the Release. Nonetheless, the District Court did note that the claim was "particularly troubled as punitive damages may not be awarded in a seaman's personal injury case under the Jones Act", citing the decisions in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990) and *O'Connell v. Interocean Management Corp.*, 90 F.3d 82 (3d Cir. 1996). (Opinion at 2-3 n.2)[6]. This area of the law is now well-settled, and Jackson's efforts to inject confusion should be rejected.

The factual circumstances of this case, that is, the alleged failure to provide medical treatment, is a subject governed by the Jones Act, although relief could also be pursued under general maritime law for the failure to pay maintenance and cure. Jackson's Complaints were originally consolidated because both involved the same set of facts. It is immaterial that Jackson divided his claim initially by filing two Complaints, and does not specifically mention punitive damages in the Jones Act Complaint. The Jones Act still provides the framework for this claim and recovery is limited by the Act. If this Court accepts Jackson's reasoning, any

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6. The Jones Act is codified at 46 U.S.C. § 688, *et seq.*

plaintiff could bypass the limitation in *Miles* by simply dividing his cause of action into two separate complaints, a result which clearly was not intended.

The District Court correctly concluded that punitive damages are not recoverable for a shipowner's failure to pay maintenance and cure. To hold otherwise would be contrary to the mandate in *Miles* wherein this Court enacted a standard to ensure uniformity when there was a conflict between general maritime law and statutory law such as the Jones Act, which clearly precludes an award of punitive damages.[7] In *Miles*, this Court held that if a factual situation is governed by a statute like the Jones Act, then the statute controls the recovery available under general maritime law as well since there should be uniformity in the face of applicable legislation. Since the Jones Act prohibited non-pecuniary recovery, the *Miles* court held that a general maritime unseaworthiness action must have a similar prohibition.

The holding of *Miles* has been consistently applied to preclude the award of punitive damages to seamen seeking damages under both the Jones Act and the general maritime law governing maintenance and cure. Post-*Miles*, it has been uniformly recognized that a seaman cannot recover punitive damages under general maritime law for the failure of a shipowner to provide maintenance and cure since the seaman could not recover punitive damages under the statutory law

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7. Jackson's reliance on the decision in *Yamaha Motor Corp., U.S.A. v. Calhoun* is misplaced. 516 U.S. 199 (1996), *on remand*, 1998 W.L. 717430 (E.D. Pa. 1998). The decision in *Yamaha* did not involve a situation where Congress had prescribed a comprehensive tort recovery scheme, as was done by the Jones Act. Jackson cites to no post-*Miles* precedent in which the uniformity requirement was not applied when there was a controlling statute.

(Jones Act) for the same acts. *Guevera v. Maritime Overseas Corp.*, 59 F.3d 1496, 1513 (5th Cir. 1995), *cert. denied*, 516 U.S. 1046, *reh'g denied*, 516 U.S. 1154 (1996); *Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495, 1505 (9th Cir. 1995), *cert. denied*, 516 U.S. 1046 (1996); *Blige v. M/V GEECHEE GIRL*, 180 F. Supp. 2d 1349, 1355 (S.D. Ga. 2001); *Watters v. Harrah's Illinois Corp.*, 993 F. Supp. 667, 676-77 (N.D. Ill. 1998); *Boyd v. Cinmar of Gloucester, Inc.*, 919 F. Supp. 208, 211 (E.D. Va. 1996); *Hollinger v. Kirby Tankships, Inc.*, 910 F. Supp. 571, 573 (S.D. Ala. 1996); *La Voie v. Kualoa Ranch and Activity Club, Inc.*, 797 F. Supp. 827, 831-32 (D. Haw. 1992).

This Court's decision in *Miles* serves as a reminder that "Congress retains superior authority in admiralty matters and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our action." *Blige*, 180 F. Supp. 2d at 1353; *Hollinger*, 910 F. Supp. at 573 (both citing *Miles*, 498 U.S. at 27).

This Court has mandated a uniformity of recovery for admiralty claims that fall within the scope of a statutory remedy. In this case, Jackson's cause of action is governed by the Jones Act, which does not allow for an award of punitive damages. Accordingly, punitive damages are therefore also not available as a recovery as a matter of law under Jackson's general maritime claim involving the alleged failure to pay maintenance and cure.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

MARY ELISA REEVES
Counsel of Record
SUSAN J. WIENER
DONNA ADELSBERGER
& ASSOCIATES, P.C.
6 Royal Avenue
P.O. Box 530
Glenside, PA 19038
(215) 576-8690

Attorneys for Respondent